A.F.R.

52

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.1549/1999

CORAM: Hon'ble Shri S.R.Nayak, Chief Justice &
Hon'ble Shri D.R.Deshmukh, J.

Petitioners : 1. State of Madhya Pradesh through Secretary, Department of Revenue, Vallabh Bhawan, Bhopal (M.P.)
: 2. Commissioner of Settlement, Gwalior (M.P.)
: 3. Assistant Settlement Officer, East Sarguja, Ambikapur, District Sarguja (M.P.)
: 4. Settlement Officer, Sargujar, (M.P.)

Versus

Respondents : 1. Rajendra Prasad Gupta, Occupation Tracer, s/o Shri P.D.Gupta, Forester, Range Office, Dhorpur, District: Sarguja, (M.P.)
: 2. Suresh Shukla, Occupation Tracer, r/o Karanji Railway Colony, District: Sarguja (M.P.)
: 3. Balistar Yadav, Occupation: Draughtfsman, s/o Shri S.P.Yadav, r/o Ambikapur, District: Sarguja, (M.P.)
: 4. Vijay Bahadur Dubey, Occupation Tracer, s/o Shri Ramraksha Tiwari, O/O Asstt. Settlement Officer, Pratappur, District: Sarguja, (M.P.)
: 5. Laxman Singh, Occupation Tracer, s/o Shri Vijay Singh, r/o Bhaiyathan, Ambikapur, District: Sarguja, (M.P.)
: 6. State Administrative Tribunal, M.P. at Jabalpur, (M.P.)

Shri Utkarsh Verma, Counsel for the petitioners/State.
Shri Amrito Das, Counsel for respondents No.1 to 5.

ORAL ORDER
(Passed on 22.2.2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

2-

In this writ petition preferred by the State and State Authorities, the validity of the order of the M.P.Administrative Tribunal, Jabalpur Bench at Jabalpur (for short 'the Tribunal) in O.A.No.1120/1992 is assailed.

2. The facts of the case, in brief, are as follows:

The respondents No.1 to 5 were appointed as Tracers vide order dated 13.6.90 of the Settlement Officer, Ambikapur Sarguja, the fourth petitioner herein, after subjecting them to selection process at the hands of the selection committee constituted by the Department and after seeking sponsorship of their names from the concerned Employment Exchange and after obtaining the recommendation of the selection committee. Of course, in the appointment order, it is stated that their appointments are purely temporary and they are liable to be removed in case their work is not found satisfactory or in case of indiscipline without any prior notice. The services of the respondents No.1 to 5 were terminated by order dated 30th March 1992 by Assistant Settlement Officer, petitioner No.3 herein. Being aggrieved by the above order of the third petitioner, the respondents No.1 to 5 instituted O.A.No.1120/92 before the Tribunal. The Tribunal by its order dated 27.6.1998 allowed Original Application and quashed the termination order with all consequential benefits flowing from the quashing. Being aggrieved by the said order of the Tribunal, the State and State Authorities are before this Court by way of Writ Petition under Article 226/227 of Constitution of India.

3. We have heard learned counsel for the parties. Learned Government Advocate would contend that since the services of the respondents No.1 to 5 were terminated vide order dated 30.3.92 without casting any stigma on the respondents No.1 to 5 in exercise of the power reserved by the Department in the appointment orders, the Tribunal ought not to have interfered with the termination order. On

the other hand, the learned counsel for the respondents No.1 to 5 while supporting the impugned order of the Tribunal would highlight that though the termination orders seem to be innocuous termination simplicitor, the impugned termination order came to be issued on the basis of misconduct attributed to the respondents No.1 to 5-employees. In other words, according to the learned counsel for respondents No.1 to 5, the termination order is based on a satisfaction of the petitioners No.3 & 4 that the respondents No.1 to 5 are guilty of misconduct and indiscipline and such an opinion was formed by them without apprising the respondents No.1 to 5 and without giving any opportunity to them to have their say in the matter, thus completely violating the principles of natural justice and mandates of Article 14 postulates.

4. Having heard learned counsel for the parties, the question that arises for our consideration and decision is whether any ground made out by the State and State Authorities to interfere with the order made by the Tribunal impugned in this writ petition. The documents placed before the Court would undeniably show that the respondents No.1 to 5 came to be appointed to the post of Tracers in pursuance of the employment notification issued by the fourth petitioner and also after obtaining sponsorship by the concerned Employment Exchange and subjecting them to the tests and interviews prescribed for the post of Tracers. It is also seen that the appointment orders were issued by the fourth petitioner on the recommendation of the selection committee constituted for selection purpose. Simply because the appointment order contains a clause, as per which, the 4th petitioner had reserved power to terminate the services of respondents No.1 to 5 in case there is no need for their service or in case it comes to his knowledge that they are guilty of indiscipline and dereliction of duties, it cannot be said that the State and State Authorities could act arbitrarily and unreasonably violating Article 14

postulates. It is not a simple case of *ad hoc* or stop-gap arrangement appointments. The respondents No.1 to 5 were appointed on regular basis against the then existing vacancies in the post of Tracers. There is no need for us to dilate on this aspect further, because, the impugned termination orders could not be sustained in law, if not for any reason but for the reason that the termination though stated to be termination simplicitor, actually, it was made in pursuance of a serious allegation made against the respondents No.1 to 5. This is disclosed by the petitioners themselves in paras 7 and 8 of the statement of objections/return filed by them before the Tribunal. They read as follows:

> "Para-7-: It is specifically denied that there were no complaints against the applicants. The performance of the applicant were not satisfactory and indiscipline was also reported to the respondent No.4 to his competent authority to take action against the applicants.
>
> Para-8-: The Annexure A-5 itself seaks that the conduct of the applicants were not satisfactory to the satisfaction of the respondent No.4 and their serves were liable to be terminated as per the conditions of appointment order. They were not entitled for any kind of notice as they were neither permanent or quasi-permanent employee".

It is needless to state that in para-7, the respondents (petitioners herein) while stating that the services of applicants (respondents No.1 to 5 herein) were not satisfactory, have also stated that the indiscipline committed by them was brought to the notice of the fourth petitioner who is competent authority to take action against the respondents No.1 to 5. In other words, according to the petitioners what they have done by issuing termination order is an action against indiscipline alleged to have been committed by the

respondents No. 1 to 5. If the State employer wants to take any action against a delinquent employee including terminating the services of such employee as a disciplinary measure, it is trite that such action could be taken by the State employer only after framing a charge of misconduct, conducting a departmental enquiry in accordance with rules and regulations governing such enquiry and after giving the delinquent officials fair opportunity to defend themselves effectively, on appreciation of the findings recorded by the enquiring authority and also taking into account all facts and circumstances of the case. Nothing of that sort has been done in this case. Strictly speaking, the termination orders passed by petitioners No.1 to 4 are penal in nature under the guise of the power to terminate the services of respondents No.1 to 5 reserved in the appointment orders. In that view of the matter, there is absolutely no good reason for us to differ from the view taken by the learned Tribunal.

5. The writ petition is devoid of merit and it is accordingly dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Angam